

Appl. No. 09/778,375
Atty. Docket No. 8414Q
Amdt. dated July 15, 2003
Reply to Office Action of April 15, 2003
Customer No. 27752

REMARKS

Claims 1 - 15 are pending in the present application, and stand rejected. Following entry of this amendment, Claims 1-16 are pending in the application. No additional claims fee is believed to be due. The drawings have been objected to. The specification has been objected to. Claim 15 has been objected to. Claims 2, 4, 5, 10, 11, 12, and 13 have been rejected under 35 U.S.C. § 112, second paragraph. Claims 1-11 and 14-15 have been rejected under 35 U.S.C. § 102.

Objections to the Drawings

The drawings have been objected to for certain inconsistencies between reference numerals used in the figures and the written description (i.e. two reference numerals were present in the description, but not identified in the drawings, and several numerals were included in the drawings, but not mentioned in the written description). The current amendment corrects these inconsistencies. Specifically, In Fig. 1, previously omitted reference numeral 56 has been added. In Figs. 1 and 2, reference numeral 52 has been redesignated reference numeral 54. In Fig. 1, reference numerals 37 and 120 have been removed. In Fig. 2, reference numeral 37 has been removed. In Fig. 4, reference numerals 500, 502, 504, 506, 508, 510, 43, and 44 have been removed. In Fig. 5, reference numeral 605 has been removed. The attached appendix provides replacement sheets, and annotated sheets showing the addition and deletions of the above-detailed changes. These amendments overcome the objections to the drawings, therefore, such objections may be withdrawn.

Objection to the Specification

The specification has been objected to for an informality on page 17, lines 7-8. Specifically, the serial number of the identified co-pending application was not included. This amendment completes the reference to the identified application by including the serial number in its identification. The replacement paragraph provided in this amendment overcomes with the objection to the specification, which may now be withdrawn.

Objection to the Claims

Claim 15 has been objected to because it repeats the word "article" in line 2. Claim 15 has been amended to correct this typographical mistake regarding the repetition of the term "article". This amendment overcomes the objection which may now be withdrawn.

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Rejection Under 35 USC §112, Second Paragraph

Claims 2, 4, 5, 10, 11, 12, and 13 have been rejected under 35 U.S.C. § 112, second paragraph as indefinite. Claims 2, 4, and 5 have been amended to provide more express antecedent basis for the limitations cited in the office action. Claims 10-13 have been amended to depend from newly presented Claim 16, which claim provides antecedent basis for the limitation "thermal cell actuator." Therefore, all rejections under 35 U.S.C. § 112 have been overcome and may be withdrawn.

Rejections Under 35 USC § 102

Claims 1-11 and 14-15 have been rejected under 35 U.S.C. § 102.

a. Rejections over Glaug et al (US 5,797,892)

Claims 1, 6, and 8-11 have been rejected under 35 U.S.C. § 102(b) as anticipated by Glaug et al. (US 5,797,892). None of these claims, however, is anticipated by the Glaug et al. patent. For example, the Office Action cites to column 5, lines 29-32 of the Glaug et al. patent for disclosure of the claimed phase change material. The cited portion of the Glaug et al. patent, however, only discloses temperature change elements and "feel wet" liners of absorbent articles. There is no evidence cited to in the Office Action that Glaug et al. discloses the claimed phase change material. A material which simply effects a temperature change does not necessarily change phases. The Office Action provides no evidence that Glaug et al. discloses an absorbent article comprising a topsheet, backsheet, and absorbent core, in which a phase change material (i.e. a material which will transition from one phase to another such as from the solid to liquid phase) disposed on at least a portion of the article. Mere temperature change is not identity with phase change. It is, of course, axiomatic that a rejection under § 102 requires identity between the prior art and the rejected claim. Because the Office Action does not demonstrate identity between Glaug et al. and Claim 1, the rejection of Claim 1 over Glaug et al. must be withdrawn. Similarly, Claims 6 and 8-9 all depend from Claim 1 and are not anticipated by the Glaug et al. patent for at least the same reasons given above with respect to Claim 1. It is also noted, that the disclosure of the Glaug et al. patent cited in the Office Action with respect to the remaining claims similarly only pertains to a temperature change element and does not disclose the claimed phase change material.

Claims 10 and 11 depend from newly presented Claim 16. As Claim 16 is patentable over the Glaug et al. patent, Claims 10 and 11 are similarly patentable. For example, Glaug et al. does not disclose the claimed thermal cell actuator which effects a change in properties of at least a

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portion of the article. By contrast, the temperature change elements of Gluag et al. merely effect a temperature change (which is provided for its own sake). Gluag et al. does not disclose the use of a temperature change to effect some other change in the properties of a portion of the article itself. Therefore, Claims 10 and 11 are not anticipated by the Gluag et al. patent.

For all of the foregoing reasons, the rejections under 35 U.S.C. § 102 over Gluag et al. should be withdrawn.

b. Rejections over Pomplun et al. (WO 00/38748)

Claims 1-2 have been rejected under 35 U.S.C. § 102(e) as supposedly anticipated by Pomplun et al. (WO 00/38748). Applicants expressly do not admit that the Pomplun et al. publication is relevant to the claims in the manner indicated in the Office Action. However, without even addressing the merits, this rejection is improper as the Pomplun et al. application is not prior art under § 102(e). The international filing date of the Pomplun et al. application is December 21, 1999. In order to qualify as a reference under § 102(e) and international application designating the United States and published in English must have an international filing date on or after November 29, 2000 (See MPEP 706.02(f)(1)). Because this international application designating the United States has an international filing date prior to November 29, 2000, the provisions of § 102 prior to the AIPA amendments apply, and under such provisions this published application is not prior art under 35 U.S.C. § 102(e) as indicated in the Office Action. Therefore, these rejections must be withdrawn.

c. Rejections over Hermann (WO 97/44183)

Claims 1, 3-7 and 14 have been rejected under 35 U.S.C. § 102(b) as anticipated by Hermann (WO 97/44183). Amended Claim 1 is not anticipated by the Hermann publication. At a minimum, the Hermann publication does not disclose the claimed liquid impervious backsheet of Amended Claim 1. The disclosure of a backsheet cited in the Office Action is directed to a stiffening or conforming layer. This layer is made out of non-woven or felted non-woven fiber material. There is no disclosure of a liquid impervious backsheet used to prevent the leakage of absorbed bodily exudates from contacting clothing, bedding or the like. Because there is not identity between the cited publication and at least the liquid impervious backsheet element of Claim 1, the Hermann document cannot anticipate the claim. Claims 3-7 and 14 all depend from Amended Claim 1 and are similarly not anticipated by the Hermann publication for at least the reasons given above with respect to Amended Claim 1. Therefore, the examiner is respectfully requested to withdraw the rejections under § 102 over the Hermann publication and to allow the claims.

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d. Rejections over Hasse (US 5,591,146)

Claims 1 and 15 have been rejected under 35 U.S.C. § 102(b) as anticipated by Hasse (US 5,591,146). Claim 1 and Claim 15 which depends from it are not anticipated by the Hasse patent. For example, at a minimum, the Office Action does not point to disclosure in the Hasse patent showing a disclosure of the claimed phase change material. The Office Action merely cites Fig. 2 and alleges that reference numeral 89 is the claimed phase change material. There is nothing in the drawing itself which would lead one of skill in the art to conclude that Fig. 2 shows the claimed phase change material. Indeed, the specification makes clear that element 89 is an attachment system for securing the sanitary napkin to panties. Fig. 2 does show microcapsules having a fragrance or odor-absorbing composition, but the Office Action cited no evidence in Hasse that Hasse discloses the claimed phase change material as that term is used in the instant application. Consequently, the rejection of Claims 1 and 15 under 35 U.S.C. § 102(b) over Hasse should be withdrawn.

Conclusion

All of the relevant rejections and objections in the Office Action have been addressed.

No new matter has been introduced by this amendment.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal and that all of the claims be allowed.

Issuance of a notice of allowance at an early date is respectfully requested.

Respectfully submitted,

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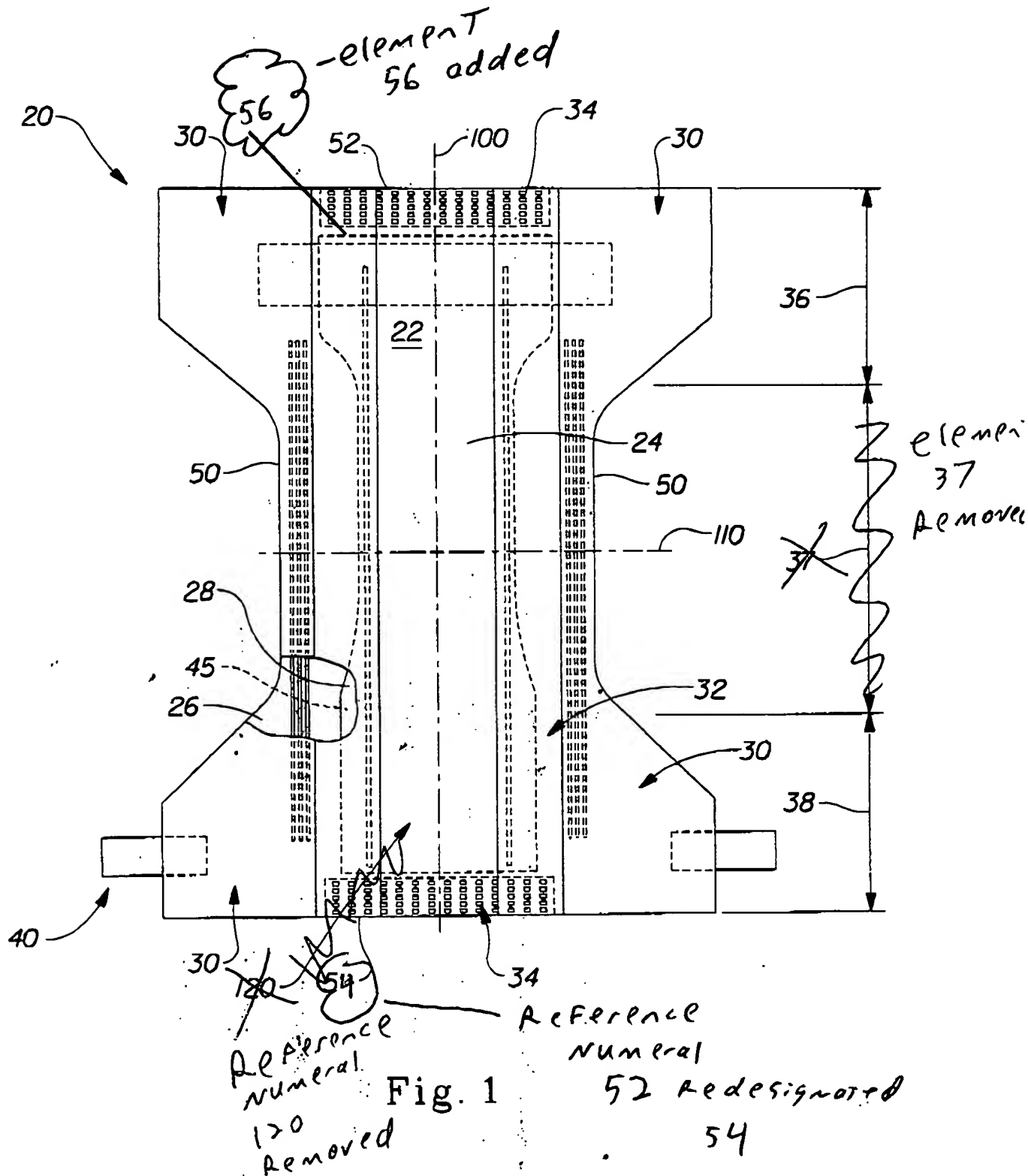
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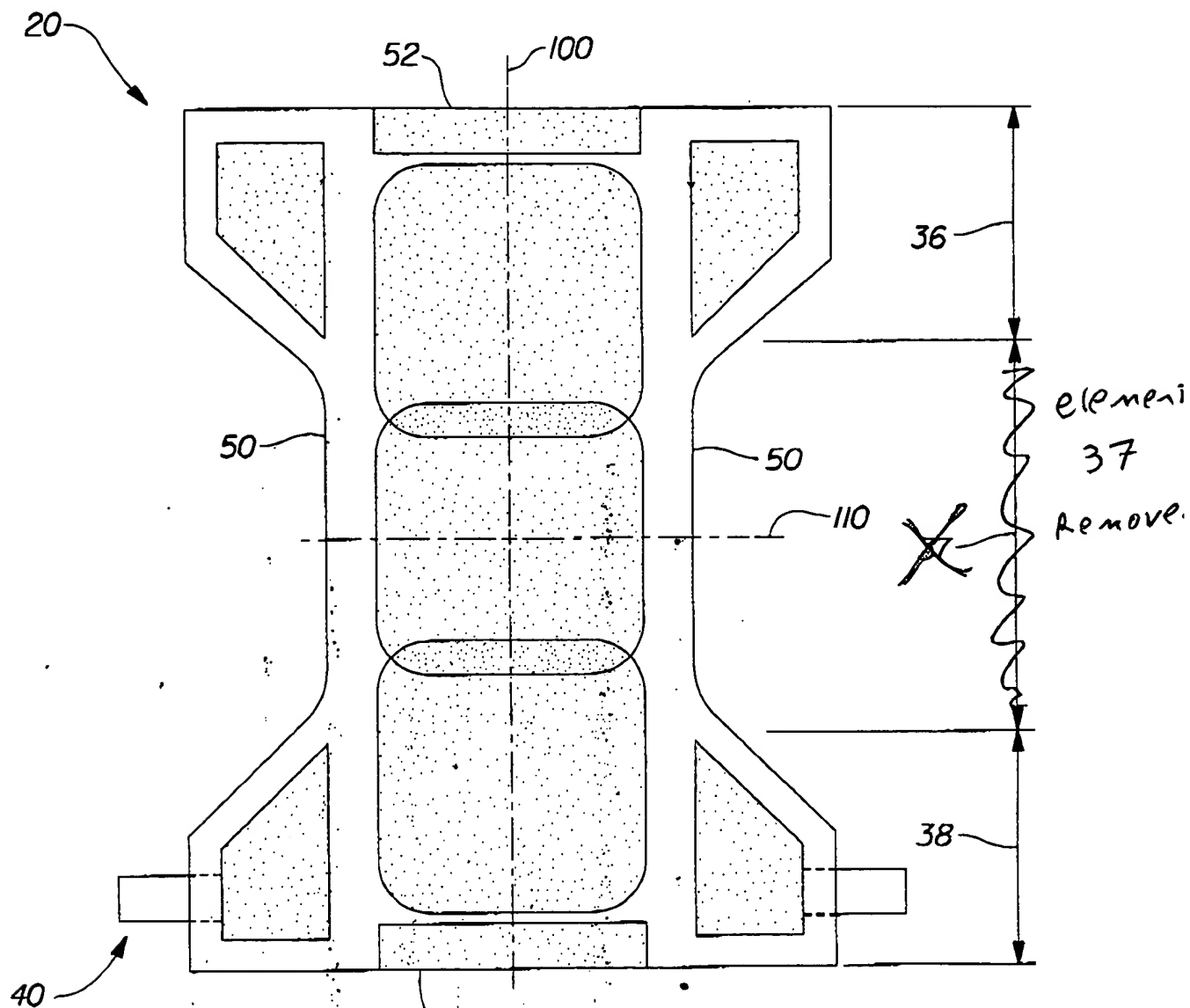
Annotated Sheet Showing Changes

1/4



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Annotated Sheet Showing Changes

2/4



~~52~~ Reference
numeral

Fig. 2 52
redesignated
54

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Annotated Sheet Showing Changes

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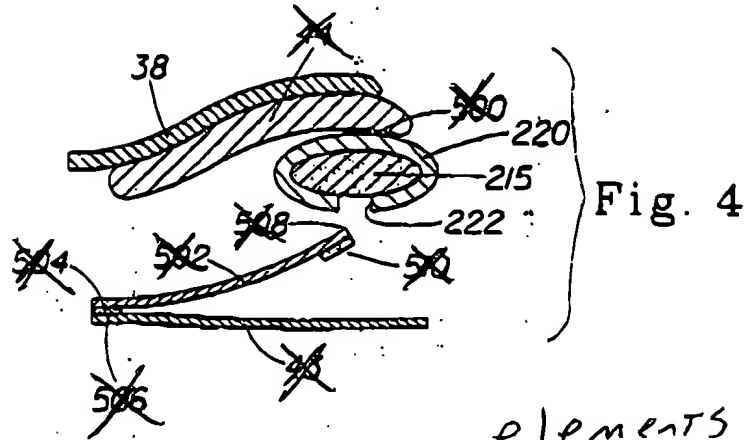


Fig. 4

elements
500, 502, 504, 506, 508,
510, 43 and 44
have been removed

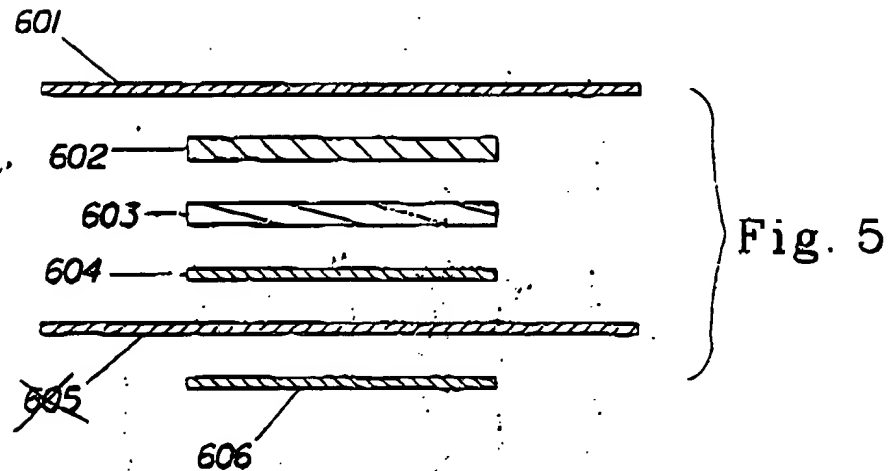


Fig. 5

Element 605 has been
removed